

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Dale Crowe,
Petitioner

v.

Case No. 1:07-cv-988

Timothy Brunsman, Warden,
Respondent

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed December 16, 2008 (Doc. 9).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections have been filed to the Magistrate Judge's Report and Recommendation.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation to be correct.

Accordingly, **IT IS ORDERED** that the Magistrate Judge's Report is **ADOPTED** as follows:

1) The petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** with prejudice.

2) A certificate of appealability will not issue with respect to the claims alleged in the petition because petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this habeas corpus proceedings. *See* 28 U.S. C. § 2253(c); Fed.R.App.P. 22(b).

3) The Court hereby certifies, pursuant to 28 U.S.C. § 1915(a)(3), that with respect to any application by petitioner to proceed *in forma pauperis*, an appeal of this Order would not be taken in good faith, and therefore denies petitioner leave to appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997). Petitioner remains free to apply to proceed *in forma pauperis* in this Court of Appeals.

SO ORDERED.

Date: January 12, 2009

s/Sandra S. Beckwith
Sandra S. Beckwith, Senior Judge
United States District Court